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# Succession Law Procedure Coverage in Estonian Public Electronic Databases: *Ametlikud Teadaanded* and the Succession Register

## 1. Introduction

In the wake of preparation of the European Succession Regulation<sup>\*1</sup> and with its coming into force on 17 August 2015, succession law procedure, including problems related to registers of wills, has become an important issue in the European Union.

To make it easier to find a will in Europe, the Notaries of Europe created the European Network of Registers of Wills (ENRW/ARERT). Operational since 2002 through secure interconnection among the various national registers, the ENRW makes it possible to carry out an EU-wide search for the will of a person who has died. The ENRW provides a common platform allowing exchange of information between national registers of wills, among them the Estonian Succession Register.<sup>\*2</sup>

The Estonian register of wills—the Succession Register—was established on 1 October 1996, in accordance with §173 of the first Estonian Succession Law Act<sup>\*3</sup> (the 1996 LSA). Since 2001, there has been an additional source of information about succession matters, in the form of notices of succession proceedings (*Pärimisteated*) in a public electronic database—namely, in the publication *Official Announcements (Ametlikud Teadaanded)*<sup>\*4</sup>.

The aim of this paper is to analyse these two Estonian databases and compare the goals set for the Estonian Succession Register to those set for other registers of wills in EU Member States in order to suggest some proposals for future development.

<sup>1</sup> Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. – OJ L 201, 27.7.2012, pp. 107–134.

<sup>2</sup> The European Network of Registers of Wills Association. Available at <http://www.arert.eu/> (most recently accessed on 18.2.2014).

<sup>3</sup> Pärimisseadus. – RT I 1996, 38, 752 ... RT I, 2008, 7, 52 (in Estonian). English text available at <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X1001K3&keel=en&pg=1&ptyyp=RT&tyyp=X&query=p%E4rimisseadus> (most recently accessed on 12.2.2014).

<sup>4</sup> Official Announcements are managed by the Estonian Centre of Registers and Information Systems (RIK). They are available via <http://www.rik.ee/en/official-announcements> (most recently accessed on 12.2.2014).

## 2. The legal basis and purpose of the registers

### 2.1. The Succession Register

Currently, the Succession Register and its administration are governed by §§ 176–179 of Chapter 7 of the second Estonian Law of Succession Act<sup>5</sup> (the 2008 LSA), and Regulation 38 of the Minister of Justice, issued on 3 December 2013, whose title translates to ‘The procedure for maintaining the Succession Register and of making entries in and release of data from the Succession Register’<sup>6</sup> (also called the SR Regulation).

The Succession Registry was created for two purposes. The first and more important goal was to create a common database for recording the existence and location of wills and succession contracts in order to facilitate their being found and the subsequent fulfilment of the last will of the testator. The secondary purpose of the register was to gather information about which notary was responsible for which succession matters. The principle related to this was stated *expressis verbis* into §176<sup>1</sup> (2) of the 2008 LSA. But the 1996 LSA already featured a provision granting delegation authority by which the Minister of Justice could foresee the need for requiring addition to the Succession Register of further data deemed necessary for settling of succession matters (§160 (2) of the 1996 LSA). According to Regulation 34, titled ‘The procedure for performance of notarial acts pursuant to the Law of Succession Act’<sup>7</sup> (the Regulation for the 1996 LSA), issued by the Minister of Justice on 20 December 1996, notaries are required to perform a query of the Succession Register after they certify an application for acceptance or renunciation of succession, to see whether another notary has already opened a file for the succession in question. If a file has been opened by another notary, the application for acceptance or renunciation of succession is forwarded to that notary. Otherwise the notary will open a succession file based on the application received and will inform the Succession Register of this fact (under the Regulation for the 1996 LSA, paragraph 22). It is necessary to note that, according to the Soviet law of succession, just as under the Estonian law—as well as under the 1996 LSA and the 2008 LSA, the heir needs only initiate the succession proceedings at a notary’s office if a succession certificate is needed—for example, in order to dispose of an immovable that is part of the estate.

From a historical perspective, it might be interesting to note that the German lawyers who were acting as experts for the drafting of the Estonian Law of Succession Act in 1995 did not think it necessary to establish a central register of wills as an institution. They did not see any possible independent function for the registry of wills as an autonomous entity. This position was understandable in those days, since Germany itself had no register of wills at the time. Germany’s Central Register of Wills (Zentrales Testamentsregister, or ZTR), under the administration of the Federal Chamber of Notaries, entered in use on 1 January 2012.<sup>8</sup>

One of the important principles of the Estonian Succession Register is that, ever since its establishment, everyone has had the right to request information from the Succession Register upon a person’s death (§162 (2) of the 1996 LSA; §179 (2) of the 2008 LSA).

The registrar is also required to respond to enquiries submitted by the registrar of the register of wills of a foreign state (under §179 (2<sup>2</sup>) and (5) of the 2008 LSA). Until maintenance of the Succession Register is transferred to the Chamber of Notaries, on 1 January 2015, the information entered in the Succession Register shall remain accessible through the Succession Register of Harju County Court (under §184<sup>1</sup> of the 2008 LSA).

Confidentiality of information pertaining to wills and succession contracts that is entered in the register is maintained until the opening of succession proceedings (see §161 of the 1996 LSA or §178 of the 2008 LSA). However, there is an exception for information associated with reciprocal wills of spouses: this information is provided already upon the death of one of the two (see §162 (1) of the 1996 LSA and §179 (1) of the 2008 LSA). This interpretation is allowed also by §3 (3) of the Notaries Act<sup>9</sup>, according to which

<sup>5</sup> Pärimiseseadus. – RT I 2008, 7, 52 ... TR I, 9.10.2013, 1 (in Estonian). English text available at <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/507112013002/consolide> (most recently accessed on 12.2.2014).

<sup>6</sup> Pärimisregistri pidamise, pärimisregistrisse kannete tegemise ja pärimisregistrist teabe väljastamise kord. – RT I, 6.12.2013, 4 (in Estonian).

<sup>7</sup> Pärimiseseadusest tulenevate notariaaltoimingute tegemise kord. – RTL 1997, 10, 68 (in Estonian).

<sup>8</sup> Zentrales Testamentsregister. Home page available at <http://www.testamentsregister.de/en> (most recently accessed on 18.2.2014).

<sup>9</sup> Notariaadiseadus. – RT I 2001, 93, 565 ... RT I, 9.10.2013, 1 (in Estonian). English text available at <https://www.riigiteataja.ee/en/eli/511112013002/consolide> (most recently accessed on 12.2.2014).

a notary may disclose information about the existence and the content of a will only after the death of the testator, except after the death of one spouse, when a notary may disclose information on the existence of the reciprocal will of the spouses and dispositions made by the deceased spouse.

In my opinion, Estonia should follow the principle of confidentiality of the last will that is commonly accepted in Europe and develop ways of better protecting the confidentiality of the will of a living person—in this case, the surviving spouse. Furthermore, there is no actual technical necessity for ‘premature’ release of information, since the entries in the Succession Register pertaining to reciprocal wills of spouses or the revocation thereof are made separately for each spouse (under §159 (3) of the 1996 LSA or §176<sup>2</sup> (2) of the 2008 LSA). By disclosing that the deceased spouse made arrangements to be effected upon his or her death and that the will is in the context of reciprocal wills of the spouses, to be applied on the death of the first spouse, the arrangements that the surviving spouse had made for after his or her death can already be directly deduced. That violates the principle according to which nobody should know whether the surviving spouse has made any arrangements at all.

Another major inconsistency in the Regulation of the Estonian Succession Register is that its main purpose—to guarantee that the provisions of the last will of the deceased can be fulfilled upon death—has not been legally ensured. That is, information about a person’s death is not directly forwarded to the Succession Register, nor does it automatically initiate the procedure of opening the last will of the deceased that had been registered and electronically preserved in the Succession Register. The current procedure is at variance with the way things are done in Germany, the main model for the law used in the development of our law of succession.

In Germany, at death, the ZTR is consulted *ex officio* for purposes of finding existing wills or other instruments related to inheritance. Thereupon, the Federal Chamber of Notaries informs the competent succession court about the existence of wills that have to be observed. This permits more rapid and efficient carrying out of the testator’s will.

The reason for this important function not having been added to the Estonian Succession Register could be either an inability to understand the problem or a lack of the will to solve it. German experts warned of unnecessary additional maintenance expenses arising from establishment of the Succession Register, primarily on account of the reporting necessary between the registers: when a testament or inheritance contract is notarised, the register of wills has to be notified. All vital statistics offices would have to notify the register of wills about the deaths they record. The register of wills, in turn, would have to notify the institution where the last will of the deceased is preserved. Apparently Estonian lawmakers decided to eliminate the state-financed element of these notification expenses identified by the German experts.

It seems that the exchange of data between the Succession Register and the population register is finally starting to function. Subsection 15 (2) of the SR Regulation states that, if doing so is technically possible, the entry about the decedent’s death shall be made automatically in the Succession Register on the basis of entries in the population register. That leaves only the last step, informing the notary who certified the last will about the death. Once administration of the Succession Register has been transferred to the Chamber of Notaries, in 2015, the question of spending state funds will become irrelevant and the notaries, should they consider automatic notification to be useful, will be sure to work out and propose corresponding Regulation.

Another obstacle to fulfilment of the main purpose of the Succession Register might be revealed by the question of the expense of notarial proceedings. Clarification may be in order. In Estonia, succession proceedings are strictly voluntary: proceedings are initiated only upon the application of some person, and the costs of initiating these proceedings have to be paid by the one submitting the application. Unlike expenses for proceedings related to the administration and inventory of the estate, the costs of initiating succession proceedings with a notary cannot be recovered from the assets of the estate. This means that if the succession registry were to notify the notary who preserved the deceased’s last will or succession contract, that notary would have to initiate the succession proceedings *ex officio*, which would necessarily entail a change in the collection of the initiation expenses.

On the other hand, this method of automatic notification as to a person’s death would eliminate the current freedom that beneficiaries have in choosing which notary will manage the succession proceedings. Since the end of 2007, there have been no territorial restrictions on notaries with respect to conducting of succession proceedings, which means that a person wishing to initiate succession proceedings will choose the notary most favourable to his or her interests. From what can be seen from the notices of succession proceedings, the notary chosen will in most cases be the one who notarised the testator’s last will. But this

is not always the case. Even in the case of such notification from the Succession Register, it is my opinion that the freedom of choosing the notary to conduct the succession proceedings is not too restricted, since even now the law provides for very different categories of persons being able to initiate succession proceedings. According to §166 (1) of the 2008 LSA, an application for initiation of succession proceedings can be submitted by, in addition to an heir, a creditor of the deceased, a legatee, or any other person who has rights in respect of the estate. Why not enable the not-yet-deceased to select the notary who will conduct their succession proceedings, by choosing the notary to notarise their last will?

A positive aspect of recovery of the expenses of initiating succession proceedings from the estate (i.e., from the person who inherited in the end) would be that it would place people who renounce succession in an equal position. Today, according to §31 of the Notary Fees Act<sup>\*10</sup> (NFA), the notary's fee for certification of an application for renunciation of succession is EUR 6.35 (see clause 31) while the notary's fee for certification of an application for initiation of succession proceedings is EUR 63.90 (see clause 32). In comparison, the notarial fee for certification of an application for acceptance of succession is EUR 65.15 (clause 30). In cases wherein application for renunciation or acceptance of succession is included in the cost of application for initiation of succession proceedings, only the notary's fee for initiation of the proceedings has to be paid (see §31<sup>1</sup> of the NFA).

## 2.2. Notices of succession proceedings (*Pärimistead*)

Publishing of notices of succession proceedings was already provided for by the first Estonian LSA, that of 1996. With the implementation of that act, the system for acceptance of succession entered use for transfer of an estate. According to §4 of the 1996 LSA, in order to inherit, the heir had to accept succession. There was a general term of 10 years for the acceptance of succession, but if a relevant application was submitted, the notary could set a shorter term, which was not to be shorter than two months (§118 of the 1996 LSA). The notary's shortening of the term for acceptance or renunciation of succession meant that potential heirs had to be notified of the new, shorter time period. A notary shortening the term was required to send written notice of doing so to persons entitled to inherit or to publish a notice in a national daily newspaper (§118 (1) of the 1996 LSA). An amendment that came into force on 1 January 2000 provided that the notary may set a term for acceptance or renunciation of succession and send written notice thereof to persons entitled to succeed or, alternatively, publish a notice in the official publication *Official Announcements (Ametlikud Teadaanded)*.

So it can be said that, according to the 1996 LSA, the purpose of publishing the notice of succession proceedings was to let it be known publicly which notary was responsible for the succession-related affairs of a certain deceased person and what time limits had been set by the notary for acceptance or renunciation of the associated succession. This was meant to ensure that all persons entitled to succession, including people whose names or contact information were not known to the notary, could exercise their right of succession and inform the notary conducting the proceedings. However, publishing a notice of succession proceedings was not obligatory by law, and every notary decided case-specifically whether to publish a notice or not. If convinced of having already notified all persons entitled to succession, a notary might not publish the notice in *Ametlikud Teadaanded*. In the first years, no notices of succession proceedings were published, irrespective of whether the person had died before 1 January 1997, meaning that the succession had to be resolved in accordance with the Civil Code of the Estonian SSR. The reason for this was that, under said civil code, the same time limit was always in place for acceptance or renunciation of succession—six months from the death in question.

*Ametlikud Teadaanded* was established on 20 January 1999 as was required by §24 of the *Riigi Teataja* Act<sup>\*11</sup> 1999, and at first it was published in printed form. The official publication *Ametlikud Teadaanded* was a non-periodic supplement to a national daily newspaper. With the amendment of 1 January 2007, it

<sup>10</sup> Notari tasu seadus. – RT I 1996, 23, 456 ... RT I, 9.10.2013, 1 (in Estonian).

<sup>11</sup> Riigi Teataja seadus. – RT I 1999, 10, 155 ... RT I 2010, 19, 101 (in Estonian). English consolidated text as of December 2007 available at <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30080K7&keel=en&pg=1&ptyyp=RT&tyyp=X&query=riigi+teataja+seadus> (most recently accessed on 23.2.2014).

was changed into an electronic official publication by the Ministry of Justice and became available only online<sup>\*12</sup>.

According to §13 of the *Riigi Teataja* Act<sup>\*13</sup> 2010, passed on 22 April 2010, *Ametlikud Teadaanded* is an official online publication and database of the Republic of Estonia, one that is published and maintained by the Ministry of Justice. Also published in *Ametlikud Teadaanded* are notices, invitations, summonses, and announcements with respect to which there is a legal requirement to publish pursuant to a statute, a Regulation of the Government of the Republic, or a Regulation of a ministry but whose exact form of publication has not been prescribed. Reading of notices via the public user interface available on the Internet is free of charge, while a fee may be charged for other services. The statutes pertaining to *Ametlikud Teadaanded*<sup>\*14</sup> are authorised by Regulation 43 of the Ministry of Justice, issued on 1 September 2011.

Without doubt, notices of succession proceedings account for the largest proportion of the notices published in *Ametlikud Teadaanded*, out of all types of notices. For example, there were, in total, 944 notices of succession proceedings in January 2014, followed by court notices (numbering 665) and notices of bankruptcy proceedings (304 notices).<sup>\*15</sup>

If, according to the 1996 LSA publishing of notices of succession proceedings in *Ametlikud Teadaanded* was up to the discretion of notaries, the 2008 LSA that came into force on 1 January 2009 made it obligatory, stating that a notary shall publish a notice pertaining to the initiation of succession proceedings in *Ametlikud Teadaanded* not later than two working days after initiation of the succession proceedings (see §168 (1) of the 2008 LSA). The list of information that must be included in the notices is set forth in a Regulation issued by the Minister of Justice (as stipulated in §168 (4) of the 2008 LSA). In the explanatory memorandum associated with the 2008 LSA, there is no explanation for imposing this obligation on notaries. This is probably because the terms of §168, along with the following §§ 169–175 of the 2008 LSA, regulating succession proceedings involving notaries, were not incorporated into the 2008 LSA until its second reading in Parliament (the Riigikogu), on 18 December 2007<sup>\*16</sup>. This might be best explained by the hope expressed by a member of the Legal Affairs Committee of the Riigikogu, Hanno Pevkur, about the new LSA as a whole:

I believe that the most positive fact about this draft act is that the legal protection of the heirs will become more certain [...]. The ones entitled to inherit must have the possibility of putting that right into practice, and I am certain that if this act comes into force, this will be possible.<sup>\*17</sup>

It follows that the purpose of such widespread publishing of the succession notices is to disseminate as much information as possible about succession proceedings being conducted by notaries, in order to provide maximal protection for the persons entitled to inherit.

### 3. The information available in the registers

#### 3.1. The Succession Register

As is mentioned above, the Estonian Succession Register differs from the registers of wills in other European countries in that, ever since its establishment, it has contained not only data about the testaments and succession contracts entered in it but also information about which notary is conducting the succession

<sup>12</sup> *Ametlike Teadaannetega seonduvate seaduste muutmise seadus* (Act Amending Acts related to *Ametlikud Teadaanded*). – RT I 2006, 55, 412 (in Estonian).

<sup>13</sup> *Riigi Teataja seadus*. – RT I 2010, 19, 101 ... RT I, 29.6.2012, 1 (in Estonian) English text available at <https://www.riigiteataja.ee/en/eli/520122013005/consolide> (most recently accessed on 21.2.2014).

<sup>14</sup> *Ametlike Teadaannete põhimäärus*. – RT I, 6.9.2011, 4.

<sup>15</sup> *Ametlikud Teadaanded*. – <https://www.ametlikudteadaanded.ee/> (most recently accessed on 21.2.2014).

<sup>16</sup> 56 SE II, *Muudatusettepanekute loetelu pärimisseaduse eelnõule* (List of Amendments to the Draft Succession Act). Available at [http://www.riigikogu.ee/?page=pub\\_ooc\\_file&op=emsplain2&content\\_type=text/html&u=20140221153243&file\\_id=209237&mnsenme=56+SE&etapp=10.12.2007&fd=28.12.2009](http://www.riigikogu.ee/?page=pub_ooc_file&op=emsplain2&content_type=text/html&u=20140221153243&file_id=209237&mnsenme=56+SE&etapp=10.12.2007&fd=28.12.2009) (in Estonian) (most recently accessed on 20.2.2014).

<sup>17</sup> 'Pärimisseaduse eelnõu (56 SE) teise lugemise jätkamine. XI Riigikogu stenogramm. III istungjärk. Kolmapäev, 16. jaanuar 2008' (Continuation of the Second Reading of the draft Succession Act (56 SE). Shorthand notes of XI Riigikogu. Session of Wednesday, 16 January 2008), available at <http://www.riigikogu.ee/?op=steno&stcommand=stenogramm&pkpkaupa=1&toimetatud=1&toimetamata=0&date=1200485246&paevakord=1442> (in Estonian) (most recently accessed on 21.2.2014).

proceedings of any given deceased person. At first, the Succession Register contained only information about the existence and location of wills and succession contracts, while the documents themselves were held at the offices of the notaries who had notarised them.

On 1 January 2009, the scope of the information to be entered in the register broadened substantially. In accordance with §176 (1) of the 2008 LSA, information about estate management measures and succession certificates was added. Last year—more precisely, with the amendment that came into force on 28 October 2013—information pertaining to disposal of a share of community property from an estate was added (§176<sup>1</sup> (2) of the 2008 LSA).

In line with the most recent amendments, the Succession Register today consists of digitised documents retained in the register and archives (§176<sup>1</sup> (1) of the 2008 LSA). Digital transcripts of notarised wills and succession contracts are stored in the archives of the Succession Register, while home-made (domestic) wills are not digitised. A digital transcript of the original of a will or succession contract is deemed to be equal to the original unless a notation has been entered in the Succession Register stating that the digital transcript was made from the original will or succession contract (see §176<sup>1</sup> (3) of the 2008 LSA).

The preparations for the archives began in the second half of 2012. It was then that the Chamber of Notaries commenced digitisation of the wills as a part of their programme for modernising the Succession Register. Wills and succession contracts from all notaries' offices were then gathered to be digitised.<sup>\*18</sup>

The information entered in the Estonian Succession Register can be accessed through the Estonian e-state portal<sup>\*19</sup>. In order to use the e-service, one has to be logged in to the state portal by means of one's chipped ID card or mobile telephone application Mobile-ID. In the section dealing with legal aid, three services related to the Succession Register are available:

1. Informing of a domestic will is an electronic service through which one can inform the Succession Register of the preparation of a domestic will.<sup>\*20</sup>
2. Wills and succession proceedings related to the user specifically are available by means of a service via which the user can view the documents related to his or her registered wills, succession contracts, and succession proceedings.<sup>\*21</sup>
3. Finding of a bequeather<sup>\*22</sup>—that is, lookup by the identity of the deceased—involves a search whose results display all valid wills and succession contracts in the Succession Register that match the search, all associated succession proceedings, and all persons receiving any share of the estate. The results also display information pertaining to heirs and estate administrators.<sup>\*23</sup>

The information about the deceased that is available in the register is divided into three categories: personal data (name, personal identification code, place and date of birth, last residence, and date of death); data about the wills and succession contracts of the deceased and their location; and data related to the succession proceedings, such as the date of certification of the application for initiation of succession proceedings or the certification of the succession certificate (including heirs' names and personal identification codes). Each document is accompanied by its entry number and the name of the person (e.g., a notary) who entered it in the register.

It can be said in conclusion that the Estonian Succession Register includes practically all relevant information about succession proceedings conducted in Estonia. Entries in the Succession Register that are related to notarial acts are made by notaries (see §177<sup>1</sup> (1) of the 2008 LSA), consular officers, or courts (see §177<sup>1</sup> (2) of the 2008 LSA). In cases wherein a person's right of succession was established by a court decision rather than a succession certificate, all information that the law requires to be included in the succession certificate must be provided in the written court decision (under §171 (7) of the 2008 LSA). Also,

<sup>18</sup> Notarite Koja 2012. aasta tegevuse aruanne (Report on the Activities of the Chamber of Notaries in 2012). Available at <http://www.notar.ee/orb.aw/class=file/action=preview/id=26088/Notarite+Koja+tegevuse+aruanne+2012.pdf> (in Estonian) (most recently accessed on 20.2.2014).

<sup>19</sup> Available at <https://www.eesti.ee/eng/services/citizen> (most recently accessed on 22.2.2014).

<sup>20</sup> Available at [https://www.eesti.ee/eng/kodusest\\_testamendist\\_teavitamine](https://www.eesti.ee/eng/kodusest_testamendist_teavitamine) (most recently accessed on 22.2.2014).

<sup>21</sup> Available at [https://www.eesti.ee/eng/minu\\_parimisregistri\\_andmed](https://www.eesti.ee/eng/minu_parimisregistri_andmed) (most recently accessed on 22.2.2014).

<sup>22</sup> In the English text of the LSA, the word 'bequeather' is used instead of the word 'deceased'. See, for example, Section 1 of the LSA of 2008, which states this in its item 2: 'A bequeather is a person whose property transfers upon his or her death to another person.'

<sup>23</sup> Available at [https://www.eesti.ee/eng/parimisregistri\\_andmed](https://www.eesti.ee/eng/parimisregistri_andmed) (most recently accessed on 22.2.2014).

according to §586 (6) of the Code of Civil Procedure<sup>24</sup>, the court is to make an entry in the Succession Register upon the application, alteration, or termination of estate management measures.

### 3.2. Notices of succession proceedings

The information included in the *Pärimisteed* can be divided into three types: notices related to the initiation of succession proceedings (§168 (1) of the 2008 LSA), notices of the calling proceedings for identification of heirs (see §169 of the 2008 LSA), and notices of calling proceedings in order to determine the obligations of the deceased (under §140 of the 2008 LSA).

According to §168 (4) of the 2008 LSA, the list of information to be contained in the notices shall be established by a Regulation issued by the Minister of Justice. The Regulation for the 2008 LSA<sup>25</sup> provides, in its §8 (1), that the notice of initiation of succession proceedings shall include at least the following information: 1) the name and given name of the deceased; 2) the deceased's date of birth and personal identification code; 3) the date of death of the deceased; 4) the planned date for attestation of the succession certificate (that is, the term for it); 5) the consequences for an heir of not informing the notary of his or her existence before the certification of the succession certificate; 6) a call to pass on the will of the deceased or any information about its location to the notary immediately; 7) that all persons entitled to inherit who wish to renounce succession have to submit a notarised application for renunciation of succession within three months of learning of the death of the relevant person and of their right to inherit; 8) that it is obligatory to send the notary information about persons entitled to inherit; and 9) that a succession certification will be attested with respect to persons about whom the notary has been informed, whose right to inherit and the scope of this right have been certified, and who have not renounced succession.

The information falling under the first three list items above is self-explanatory. The purpose of informing of the planned time limitation (or term) for certification of the succession certificate is to urge all relevant persons to contact the notary conducting the succession proceeding before the term expires. For the next items in the list, the content involved is somewhat less clear, at least in its value as-is.

In fact, the content under clauses 6, 7, and 9 of the Regulation repeats the text of the 2008 LSA verbatim. The information in question can also be accessed through the Estonian e-state portal, associated with the Succession Register. This is similar to the situation with the German *ZTR* home page; important legal information pertaining to succession is likewise provided on the first page of the register. However, in *Pärimisteed* that information is repeated in each and every notice, which makes the notices overly lengthy.

For example, under §8 (1) 6) of the Regulation for the 2008 LSA is derived from §26 of the 2008 LSA, which in its item 2 imposes on the possessor of the testator's will the obligation to come forward immediately and submit the testament. The notary shall issue a document to the person who submits the domestic will upon submission, pertaining to the depositing of the will, which shall be signed by both the person submitting the will and the notary. Generally, notaries state in the *Pärimisteed* the obligation to present the testament, but some of them do not include the word 'immediately' and ask simply that the testament be brought to their office before the expiry of the term for the succession certificate. The latter kind of notice does not correspond to the text and the intent of the law. Also, if the intent of the law is that the will of a deceased person that is in some other person's possession be brought to the notary as soon as possible, to which notary's office it is brought should not matter. That would not necessarily be the office of the notary conducting the succession proceedings, especially if said office is far from the possessor of the will (for example, in a case of his or her residence being remote) and it would be more convenient to present the will to the closest notary's office.

The information listed under clause 7 of §8 (1) of the Regulation for the 2008 LSA is derived from §§ 118 and 119 of the 2008 LSA, while the content under clause 9 is derived from §171 of the 2008 LSA.

At the same time, fulfilling the requirements detailed under clause 5 of §8 (1), of the Regulation for the 2008 LSA can be difficult for notaries. It is quite rare to find in the *Pärimisteed* an explanation of the notary as to the consequences of not informing the notary of a (potential) heir before the term for attesting the succession certificate has expired. In most notices, there is no mention of this possible development.

<sup>24</sup> Tsiviilkohtumenetluse seadustik. – RT I 2005, 26, 197 ... RT I, 6.2.2014, 13 (in Estonian). English text available at <https://www.riigiteataja.ee/en/eli/514022014002/consolide> (most recently accessed on 21.2.2014).

<sup>25</sup> Pärimisseadusest tulenevate notari ametitoimingute tegemise kord. – RTL 2008, 101, 1435 ... RT I, 7.2.2014, 11 (in Estonian).

Only a few notaries have referred to §175 of the 2008 LSA, according to which, if the incorrectness of a succession certificate, legatee certificate, certificate of recipient of a compulsory portion, or certificate of executor of a will becomes apparent after the notarisation thereof, the notary shall revoke it on his or her own initiative or on the basis of a notarised application by an interested person.

According to §8 (3) of the 2008 LSA, if the planned date of attestation for the succession certificate has been set earlier than three months from publishing of the notice, then the notice of initiation of succession proceedings has to include notice that an heir who wishes to be covered by the succession certificate must inform the notary personally before the end of the set term. On the other hand, according to §171 (1) of the 2008 LSA, a notary shall attest a succession certificate if sufficient proof is provided as to the right of succession of an heir and the extent of that right but not less than one month after publication of the notice in *Ametlikud Teadaanded*.

According to §169 of the 2008 LSA, if the existence of an heir is not known or there is no reliable information pertaining to the place of residence of an heir, the notary shall conduct calling proceedings for identification of the heir. In that event, the notary shall publish a call for identification of an heir in the official publication *Ametlikud Teadaanded*. The notary may publish the call additionally in another publication. If the notary has not published a notice dealing with the initiation of succession proceedings before conducting the calling proceedings for identification of heirs, the notary shall publish the call in conjunction with the notice pertaining to the initiation of succession proceedings.

If, after reasonable time has passed from the publication of the notice regarding the calling proceedings for identification of heirs, insufficient proof related to the right of succession of an heir or the extent of that right is provided for purposes of attesting the succession certificate, the notary shall attest the succession certificate in a manner indicating the information that has become known to the notary in the succession proceedings pertaining to the persons who have accepted succession and, if it is possible to do so, information on any persons who may be entitled to accept succession (see §171 (6) of the 2008 LSA).

If no successor is known and no heir reports within one month from the publication of the call via the calling proceedings for determination of the heirs, or if a person who has reported him- or herself fails to prove his or her right of succession within one month from the due date associated with the calling proceedings, it shall be presumed that the intestate successor is the local government of the place of opening of succession-or, alternatively, the State in the case specified in §18 of the 2008 LSA (see also §125 (3) of the 2008 LSA).

Regardless, it would make sense to divide notices of succession proceedings into three types in accordance with their nature: notices about the initiation of succession proceedings, calls for proceedings for identification of an heir, and calls for proceedings for creditors of the deceased to be conducted by bailiffs. Of these, the calls for proceedings for identification of heirs could, in turn, be divided into two types: one consisting of those notices filed when there are no known heirs and the question is whether or not the local government or the state will inherit. The second category would cover calls in cases wherein there is some information available about the heirs but not their exact name or address. In general, this occurs when the closest heirs—the intestate heirs of first and second degree—have renounced succession and, therefore, the right to inherit has passed to more distant relatives, information about whom is more difficult to find in the databases available to notaries.

As is mentioned above, everyone, including the persons entitled to inherit and the creditors of the deceased, has since the end of 2013 had access to information about the initiation of succession proceedings and about the notary conducting them, just as much as about the general state of succession proceedings, directly through the Succession Register in the e-state portal. Therefore, in my opinion, there is no need to publish in the *Pärimisteated* notices simply declaring the initiation of succession proceedings. All that is needed for retrieval of information from either database is to know the name of the deceased. The only difference is that in the case of the Succession Register it is necessary also to know the personal identification code or date of birth of the deceased. A great advantage of the notices of succession proceedings in their current form is the opportunity to search for information on the basis of both date and keywords.



## 4. Conclusions

Succession proceedings conducted by Estonian notaries are readily accessible and observable by all interested persons through the Succession Register and the electronic database of notices of succession proceedings published in *Ametlikud Teadaanded*. From the data available in the Succession Register it is possible to obtain much more information about the succession proceedings than simply that wills and succession contracts exist, whilst the latter information is more typical for most registers of wills in other countries.

While the Succession Register, as an institution, has thus far been managed by the court, it is not by nature a court register. Therefore, the transfer of the Succession Register to the Chamber of Notaries on 1 January 2015 is certainly justified, particularly if we consider that administration of the register of wills in most European countries is handled by the relevant country's equivalent to the chamber of notaries.

After the latest amendments, which made access to information in the Succession Register available to nearly everyone, it is questionable whether *Pärimisteated*, largely duplicating the register, should be continued in the current form. Some of the information included in the notices published so far is too burdensome and should in the future be left out. More concise and better-structured information would make it easier to follow the notices of succession proceedings and to get an overview. This, in turn, would better serve one of the most important purposes of the database: opportunities for notaries and bailiffs to notify those persons (heirs and creditors of the deceased) whose contact information they cannot otherwise find.